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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Case No.: 24-cv-1982

CLASS ACTION COMPLAINT

JORDAN EISMAN, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

JOHNSON & JOHNSON CONSUMER,
INC., KENVUE, INC.,

Defendants.

- 1. BREACH OF EXPRESS
WARRANTY;**
- 2. BREACH OF IMPLIED
WARRANTY;**
- 3. FRAUD (AFFIRMATIVE
MISREPRESENTATION,
OMISSION, AND
CONCEALMENT);**
- 4. NEGLIGENT
MISREPRESENTATION AND
OMISSION;**
- 5. VIOLATION OF STATE
CONSUMER PROTECTION LAWS**
- 6. NEGLIGENCE**
- 7. UNJUST ENRICHMENT**

JURY TRIAL DEMANDED

1 Plaintiff Jordan Eisman (“Plaintiff”), by his undersigned counsel, on behalf of himself
2 and all persons similarly situated, brings this Complaint against Defendants Johnson &
3 Johnson Consumer, Inc., and Kenvue Inc. (referred to collectively as “Defendants” and, at
4 times, individually as each “Defendant”) and alleges as follows:
5

6 **NATURE OF THE ACTION**
7

8 1. This case arises from contaminated and wrongly manufactured shampoo products
9 containing benzene that were designed, manufactured, marketed, distributed, packaged, and/or
10 sold by Defendants (identified and defined *infra*) in the United States. The specific coal tar
11 shampoo products are the Neutrogena T/Gel product or brand name including Neutrogena
12 T/Gel Therapeutic Shampoo—Original Formula and Neutrogena T/Gel Therapeutic
13 Shampoo—Extra Strength (collectively, the “Coal Tar Shampoo Products”). These Coal Tar
14 Shampoo Products are not merchantable and are not of the quality represented by Defendants
15 named herein.
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18 2. Defendants’ Coal Tar Shampoo Products contain dangerously high, undisclosed
19 levels of benzene, a hazardous genotoxic substance. These dangerously high levels of benzene
20 are not disclosed by Defendants and were only discovered very recently by testing of
21 Defendants’ Coal Tar Shampoo Products.
22

23 3. Defendants sought to profit at consumers’ expense by falsely labelling and selling
24 Coal Tar Shampoo Products that contained undisclosed levels of benzene. Benzene is typically
25 used in the manufacture of gasoline and other industry chemicals or textiles. Because of its
26 health effects, in 2011 the United States Environmental Protection introduced regulations that
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28

1 lowered benzene content in gasoline.¹ Meanwhile, Plaintiff and other class members directly
2 and unknowingly purchased Defendants' Coal Tar Shampoo Products to apply to treat their
3 scalps when the products contained undisclosed levels of benzene impurities.
4

5 4. Plaintiff brings this action for economic damages and injunctive relief on behalf
6 of all persons who paid for Defendants' Coal Tar Shampoo Products wrongly manufactured,
7 sold, labeled, marketed, and distributed in the United States. Defendants' Coal Tar Shampoo
8 Products contained high levels of benzene. Defendants' Coal Tar Shampoo Products were of
9 lesser quality and worthless (or certainly worth less) through unacceptable and undisclosed
10 levels of benzene.
11
12

13 5. At all times during the period alleged herein, Defendants represented and
14 warranted to consumers and others that their Coal Tar Shampoo Products were comprised of
15 the materials disclosed on the products' labels and were merchantable and fit for use. Yet,
16 Defendants knowingly, fraudulently, and/or negligently manufactured, labeled, marketed,
17 and/or sold their Coal Tar Shampoo Products that contained extremely high levels of the
18 carcinogenic substance benzene. Defendants have been unjustly enriched through the sale of
19 these knowingly adulterated and/or misbranded products. Defendants' conduct also
20 constitutes actionable fraud, consumer fraud, negligence, and other violations of law as set
21 forth herein.
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¹ EPA Gasoline Mobile Source Air Toxics, available at <https://www.epa.gov/gasoline-standards/gasoline-mobile-source-air-toxics> (last visited Feb. 11, 2024).

PARTIES

A. Plaintiff

6. Plaintiff Jordan Eisman is a citizen of California. During the class period, Plaintiff paid money for one or more of Defendants' Coal Tar Shampoo Products. Specifically, Plaintiff purchased at least one or more Coal Tar Shampoo Products, manufactured and sold at retail to Plaintiff and other consumers as follows. By way of example, Plaintiff purchased Neutrogena T/Gel Therapeutic Shampoo—Extra Strength, in February 2021. Defendants expressly and impliedly warranted to Plaintiff that the Coal Tar Shampoo Products that Plaintiff purchased were merchantable and of the represented quality and did not contain any undisclosed substances or risks. But in fact, Plaintiff purchased product that was not of the represented merchantability or quality. Plaintiff would not have paid money for Defendants' Coal Tar Shampoo Products but for their concealment of the benzene levels in those products. Further, Plaintiff used Defendants' Coal Tar Shampoo Products to treat his scalp, not knowing the products were contaminated with harmful levels of benzene. Plaintiff thus suffered cellular and genetic injury and suffered an increased risk that Plaintiff will develop further personal harm injury in the future as a result of such exposure.

B. Defendants

7. Defendant Johnson & Johnson Consumer, Inc. ("Johnson & Johnson") is a Delaware corporation with its principal place of business in New Brunswick, New Jersey. At all times material to this action, Johnson & Johnson has been engaged in the manufacture, sale, marketing, and/or distribution of adulterated and/or misbranded Coal Tar Shampoo

1 Products in the United States, including, but not limited to, the aforementioned Neutrogena
2 T/Gel Therapeutic shampoo product line.

3
4 8. Defendant Kenvue Inc. (“Kenvue”) is a Delaware corporation with its principal
5 place of business in Skillman, New Jersey. At all times material to this action, Kenvue has
6 been engaged in the manufacture, sale, marketing, and/or distribution of adulterated and/or
7 misbranded Coal Tar Shampoo Products in the United States, including, but not limited to, the
8 aforementioned Neutrogena T/Gel Therapeutic shampoo product line.

9
10 9. Upon information and belief, one or more other entities manufactured,
11 distributed, marketed, and/or sold Coal Tar Shampoo Products during the class period. The
12 true names, affiliations, and/or capacities of John Doe Defendants are not presently known.
13 However, each John Doe proximately caused damages to Plaintiff and other class members as
14 alleged herein, and each John Doe is liable to Plaintiff and other class members for the acts
15 and omissions alleged below as well as the resulting damages. Plaintiff will amend the
16 complaint to allege the true names and capacities of the John Does when evidence reveals
17 their identities.

21 **JURISDICTION AND VENUE**

22
23 10. This Court has original jurisdiction pursuant to the Class Action Fairness Act, 28
24 U.S.C. § 1332(d), because (a) at least one member of the proposed class is a citizen of a state
25 different from that of Defendants, (b) the amount in controversy exceeds \$5,000,000,
26 exclusive of interest and costs, (c) the proposed class consists of more than 100 class members,
27 and (d) none of the exceptions under the subsection apply to this action.

11. This Court has personal jurisdiction over Defendants pursuant to 28 U.S.C. § 1407, and because Defendants have sufficient minimum contacts in California, and because Defendants have otherwise intentionally availed themselves of the markets within California through their business activities, such that the exercise of jurisdiction by this Court is proper and necessary. Further, Plaintiff resides and purchased product in California.

12. Venue is proper in this District because at least one plaintiff resides in this District, 28 U.S.C. § 1391(b)(1); “a substantial part of the events or omissions giving rise to the claim occurred” in this District, 28 U.S.C. § 1391(b)(2); and Defendants are subject to the personal jurisdiction of this Court, 28 U.S.C. § 1391(b)(3).

FACTUAL ALLEGATIONS

A. Benzene Is a Harmful Substance

13. Benzene is used primarily as a solvent in the chemical and pharmaceutical industries, as a starting material and intermediate in the synthesis of numerous chemicals, and in gasoline. The major United States source of benzene is petroleum. The health hazards of benzene have been recognized for over one hundred years. According to the National Toxicology Program (“NTP”), benzene is “*known to be a human carcinogen* based on sufficient evidence of carcinogenicity from studies in humans.”² Benzene has also been “found to be carcinogenic to humans” by the International Agency for Research on Cancer (“IARC”). Benzene was “[f]irst evaluated by IARC in 1974 ... and was found to be carcinogenic to

² <http://ntp.niehs.nih.gov/go/roc/content/profiles/benzene.pdf> (emphasis added).

humans (Group 1), a finding that has stood since that time.”³ As noted by the IARC:

In the current evaluation, the Working Group again confirmed the carcinogenicity of benzene based on sufficient evidence of carcinogenicity in humans, sufficient evidence of carcinogenicity in experimental animals, and strong mechanistic evidence The Working Group affirmed the strong evidence that benzene is genotoxic, and found that it also exhibits many other key characteristics of carcinogens, including in exposed humans. In particular, benzene is metabolically activated to electrophilic metabolites; induces oxidative stress and associated oxidative damage to DNA; is genotoxic; alters DNA repair or causes genomic instability; is immunosuppressive; alters cell proliferation, cell death, or nutrient supply; and modulates receptor-mediated effects.⁴

Likewise, the Food and Drug Administration (“FDA”) recognizes that “[b]enzene is a carcinogen that can cause cancer in humans”⁵ and classifies benzene as a “Class 1” solvent that should be a “avoided.”⁶ FDA’s Guidance for Industry states that “Solvents in Class 1 ... should not be employed in the manufacture of drug substances, excipients, and drug products because of their unacceptable toxicities or deleterious environmental effect.”⁷

14. Aside from carcinogenicity, benzene is associated with numerous side effects, including vomiting, stomach irritation, dizziness, sleepiness, convulsions, irregular heartbeat, tissue injury, bone marrow damage, decrease in red blood cells, anemia, irregular menstrual cycles, low fertility, and excess bleeding.

B. Benzene Contamination in Defendants’ Coal Tar Shampoo Products

³ Benzene / IARC Working Group on the Evaluation of Carcinogenic Risks to Humans (2017:Lyon, France), at p. 33.

⁴ *Id.* at 34.

⁵ <https://www.fda.gov/food/chemicals/questions-and-answers-occurrence-benzene-soft-drinks-and-other-beverages#q1>.

⁶ <https://www.fda.gov/media/71737/download>.

⁷ FDA Guidance for Industry, Q3C Impurities: Residual Solvents (6/30/2017), available at <https://www.fda.gov/media/71736/download>.

1 15. The composition and properties of a coal tar depend primarily on the temperature
2 of the carbonization and to a lesser extent on the nature (source) of the coal used as feedstock.

3
4 16. In general, coal tars are complex combinations of hydrocarbons, phenols, and
5 heterocyclic oxygen, sulfur, and nitrogen compounds. Over 400 compounds have been
6 identified in coal tars, and as many as 10,000 may actually be present.

7
8 17. Benzene is a substance found in, and that may be removed through refinement
9 from, coal tar.

10 18. Manufacturers such as Defendants have an obligation to reduce or eliminate
11 benzene from their Coal Tar Shampoo Products.

12
13 19. Manufacturers such as Defendants also have an obligation to test their Coal Tar
14 Shampoo Products for undisclosed and/or potentially harmful substances, such as benzene.

15
16 20. Defendants did not properly manufacture their Coal Tar Shampoo Products to
17 reduce or eliminate benzene or properly test and monitor their Coal Tar Shampoo Products for
18 the presence of benzene.

19
20 21. Defendants never disclosed that any of their Coal Tar Shampoo Products
21 contained any amount of benzene or posed any health risks associated with benzene.

22 22. However, Defendants' Coal Tar Shampoo Products did in fact contain benzene.
23 Testing, for instance, reveals that Defendants' Coal Tar Shampoo Products contain benzene
24 between 0.82ppm to 1.49ppm (Neutrogena T/Gel Therapeutic Shampoo—Original Formula)
25 and 4.36ppm (Neutrogena T/Gel Therapeutic Shampoo—Extra Strength).
26

27
28 23. Again, there should not be any benzene in Coal Tar Shampoo Products. By

1 comparison, Defendants or other firms recently recalled various sunscreen products for
2 containing benzene levels up to 2ppm. The levels in Coal Tar Shampoo Products are at least
3 the same, if not greater.
4

5 **C. Fraudulent Concealment, Tolling, and Continuing Violations**

6 24. Plaintiff's and other class members' causes of action could not and did not accrue
7 prior to the filing of this complaint because Defendants actively concealed and did not reveal
8 the presence of benzene in Coal Tar Shampoo Products.
9

10 25. Plaintiff and other class members exercised reasonable diligence but could not
11 discover Defendants' wrongful conduct earlier.
12

13 26. For instance, Defendants did not reveal to the public that their Coal Tar Shampoo
14 Products contained benzene, or the levels of benzene present, or the insufficient manufacturing
15 processes Defendants utilized to manufacture the Coal Tar Shampoo Products.
16

17 27. To the contrary, each Defendant continued to represent and warrant that the Coal
18 Tar Shampoo Products were merchantable, fit for intended purpose, and of the quality and
19 composition as marketed.
20

21 28. Because of this, Plaintiff and other class members did not discover, nor could
22 they have discovered through reasonable and ordinarily diligence, each Defendant's
23 deceptive, fraudulent, and unlawful conduct alleged herein. Defendants' false and misleading
24 explanations or obfuscations lulled Plaintiff and other class members into believing that the
25 prices paid for Coal Tar Shampoo Products were appropriate despite their exercise of
26 reasonable and ordinary diligence.
27
28

1 29. Alternatively, any statute of limitation or prescriptive period is equitably tolled
2 on account of fraudulent concealment. Defendants each affirmatively concealed from Plaintiff
3 and other class members their unlawful conduct. Each Defendant affirmatively strove to avoid
4 disclosing their knowledge or the true nature of their Coal Tar Shampoo Products.
5

6 30. As a result of each Defendant's affirmative and other acts of concealment, any
7 applicable statute of limitations affecting the rights of Plaintiff or other class members has
8 been tolled. Plaintiff and/or other class members exercised reasonable diligence by, among
9 other things, promptly investigating and bringing the allegations contained herein. Despite
10 these or other efforts, Plaintiff was unable to discover, and could not have discovered, the
11 unlawful conduct alleged herein at the time it occurred or at an earlier time so as to enable this
12 complaint to be filed sooner.
13
14

15 31. Defendants' wrongful conduct and obfuscation thereof constitutes continuing
16 violations for purposes of any limitations period.
17

18 **CLASS ACTION ALLEGATIONS**
19

20 32. Plaintiff brings this action both individually and as a class action pursuant to Fed.
21 R. Civ. P. 23(a), 23(b)(2), and 23(b)(3) against Defendants on Plaintiff's own behalf and on
22 behalf of the Class(es) defined below, to the extent class members from these jurisdictions can
23 be grouped together for purposes of class treatment:
24

25 All individuals and entities in the United States and its territories
26 and possessions who, within the applicable limitation periods to the
27 present, paid any amount of money for Coal Tar Shampoo Products
28 (intended for personal use) that were manufactured, distributed, or
sold by Defendants.

1
2 33.Plaintiff also alleges the following Subclass:

3 All individuals and entities in California and its territories and
4 possessions who, within the applicable limitation periods to the
5 present, paid any amount of money for a Coal Tar Shampoo Product
6 (intended for personal use) that were manufactured, distributed, or
sold by Defendants.

7 34. Excluded from the Class(es) are: (a) any judge or magistrate presiding over this
8 action, and members of their families; (b) each Defendant and its employees, officers,
9 directors, and agents; (c) each Defendant's legal representatives, assigns, and successors; and
10 (d) all persons who properly execute and file a timely request for exclusion from any Court-
11 approved class.
12

13 35. Plaintiff reserves the right to narrow or expand the foregoing class definitions, or
14 to create or modify subclasses as the Court deems necessary.
15

16 36. Plaintiff meets the prerequisites of Rule 23(a) to bring this action on behalf of the
17 Class(es).
18

19 37. **Numerosity:** While the exact number of class members cannot be determined
20 without discovery, they are believed to consist of potentially millions of consumers
21 nationwide. The Class(es) are therefore so numerous that joinder of all members is
22 impracticable.
23

24 38. **Commonality:** Common questions of law and fact exist as to all class members,
25 including, but not limited to:
26

27 a. Whether Defendants made express or implied warranties to Plaintiff and other
28 class members regarding their Coal Tar Shampoo Products;

- b. Whether Defendants' Coal Tar Shampoo Products contained undisclosed benzene impurities and the levels of such impurities;
- c. Whether Defendants violated standards relating to the manufacture or testing of their Coal Tar Shampoo Products;
- d. Whether Defendants falsely claimed that their Coal Tar Shampoo Products were merchantable, fit for intended purposes, and otherwise of the quality and composition represented;
- e. Whether Defendants affirmatively or negligently misrepresented or omitted facts regarding their manufacture, sale, or testing of their Coal Tar Shampoo Products;
- f. Whether Plaintiff and other class members have been economically injured, or are at greater risk of bodily injury in the future, as a result of each Defendant's unlawful conduct, and the amount of their damages;
- g. Whether a common damages model can calculate damages on a class-wide basis;
- h. When Plaintiff's and other class members' causes of action accrued; and
- i. Whether each Defendant fraudulently concealed Plaintiff's and other class members' causes of action.

39. **Typicality:** Plaintiff's claims are typical of other class members' claims. Plaintiff and other class members all suffered the same type of economic harm. Plaintiff has substantially the same interest in this matter as all other class members, and his claims arise

1 out of the same set of facts and conduct as the claims of all other class members.

2 40. **Adequacy of Representation:** Plaintiff is committed to pursuing this action and
3 has retained competent counsel experienced in pharmaceutical litigation, consumer fraud
4 litigation, class actions, and federal court litigation. Accordingly, Plaintiff and Plaintiff's
5 counsel will fairly and adequately protect the interests of other class members. Plaintiff's
6 claims are coincident with, and not antagonistic to, those of the other class members they seek
7 to represent. Plaintiff has no disabling conflict with other class members and will fairly and
8 adequately represent the interests of class members.
9

10
11 41. The elements of Rule 23(b)(2) are met. Each Defendant has acted on grounds that
12 apply generally to all class members so that preliminary and/or final injunctive relief and
13 corresponding declaratory relief are appropriate respecting the Class(es) as a whole.
14

15 42. The requirements of Rule 23(b)(3) are met. The common questions of law and
16 fact enumerated above predominate over the questions affecting only individual class
17 members, and a class action is the superior method for fair and efficient adjudication of the
18 controversy. Although many other class members have claims against Defendants, the
19 likelihood that individual class members will prosecute separate actions is remote due to the
20 time and expense necessary to conduct such litigation. Serial adjudication in numerous venues
21 would not be efficient, timely, or proper. Judicial resources would be unnecessarily depleted
22 by resolution of individual claims. Joinder on an individual basis of thousands of claimants in
23 one suit would be impractical or impossible. In addition, individualized rulings and judgments
24 could result in inconsistent relief for similarly situated plaintiffs. Plaintiff's counsel, highly
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26
27
28

1 experienced in pharmaceutical litigation, consumer fraud litigation, class actions, and federal
2 court litigation, foresee little difficulty in the management of this case as a class action.

3
4 **CAUSES OF ACTION**

5 **FIRST COUNT**

6 **BREACH OF EXPRESS WARRANTIES AGAINST DEFENDANTS**

7
8 43. Plaintiff alleges this claim for relief on behalf of himself and all similarly situated
9 class members, both those in California and those in other states, the laws of which do not
10 conflict with California law.

11
12 44. Plaintiff incorporates the allegations in paragraphs 1-42 as though fully set forth
13 herein.

14 45. Plaintiff and each other class member as set forth in this subsection formed a
15 contract with Defendants at the time they purchased Coal Tar Shampoo Products. The terms
16 of the contract included the promises and affirmations of fact made by Defendants on the Coal
17 Tar Shampoo Products' packaging and through marketing and advertising, including that the
18 products would be of the quality and character as represented. This labeling, marketing, and
19 advertising constitute express warranties and became part of the basis of the bargain and are
20 part of the standardized contract between class members and Defendants.
21

22
23 46. Defendants expressly warranted that their Coal Tar Shampoo Products were fit
24 for ordinary use, were safe and effective for their intended use, and did not contain any
25 undisclosed impurities, substances, or risks.
26

27
28 47. Defendants sold Coal Tar Shampoo Products that they expressly warranted were

1 manufactured and tested properly and did not contain any undisclosed impurities, substances,
2 or risks. This includes statements in the product labeling and packaging that described the
3 product as safe and effective without disclosing the presence or levels of benzene.
4

5 48. Defendants' Coal Tar Shampoo Products did not conform to their express
6 representations and warranties because the product was not manufactured, tested, or marketed
7 properly to account for undisclosed impurities, substances, or risks.
8

9 49. At all times relevant times, California and all other states had codified and
10 adopted the provisions of the Uniform Commercial Code governing the warranty of
11 merchantability and fitness for ordinary purpose.
12

13 50. At the time Defendants marketed and sold their Coal Tar Shampoo Products, each
14 Defendant recognized the purposes for which the products would be used and expressly
15 warranted the products were manufactured properly, tested properly, and did not contain any
16 undisclosed impurities, substances, or risks. These affirmative representations became part of
17 the basis of the bargain in every purchase by Plaintiff and every other class member.
18

19 51. Each Defendant breached its express warranties with respect to its Coal Tar
20 Shampoo Products as they were not of merchantable quality, were not fit for their ordinary
21 purpose, and contained undisclosed impurities, substances, or risks.
22

23 52. Plaintiff and each other class member would not have purchased the Coal Tar
24 Shampoo Products had they known these drugs contained undisclosed benzene impurities, or
25 that the products did not have the represented safety and efficacy profile. Or, alternatively,
26 Plaintiff and each other class member would have paid less for the Coal Tar Shampoo
27
28

Products.

53. Direct privity exists between Defendants and Plaintiff and each other class member. Alternatively, direct privity is not required between each Defendant and Plaintiff and each other class member because, among other things, each Defendant is a manufacturer and made direct statements about the safety of its products and intended its statements and affirmations to flow to Plaintiff and to each other class member.

54. As a direct and proximate result of each Defendant's breach of warranty, Plaintiff and each other class member have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Coal Tar Shampoo Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

55. Although Plaintiff does not seek to recover for physical injuries, Defendants' Coal Tar Shampoo Products carried undisclosed risks and resulted in physical impact to Plaintiff and other class members, including unbargained for, undisclosed sub-cellular or structural impact on Plaintiff's and each other class member's bodies.

56. Pre-suit notice is not required, but even if it is, such notice was provided to each Defendant.

SECOND COUNT

BREACH OF IMPLIED WARRANTIES AGAINST DEFENDANTS

57. Plaintiff alleges this claim for relief on behalf of himself and all similarly situated class members, both those in California and those in other states, the laws of which do not conflict with California law.

58. Plaintiff incorporates the allegations in paragraphs 1-42 as though fully set forth herein.

59. Plaintiff and each other class member formed a contract with each Defendant at the time they purchased the Coal Tar Shampoo Products. The terms of the contract include the promises and affirmations of fact made by each Defendant on the Coal Tar Shampoo Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and are part of the standardized contract between class members and each Defendant.

60. Each Defendant impliedly warranted that its Coal Tar Shampoo Products were fit for ordinary use, were safe and effective for intended use, and did not contain any undisclosed impurities, substances, or risks. This includes statements in the product labeling and packaging that described the product as safe and effective without disclosing the presence or levels of benzene.

61. At the time Defendants marketed and sold their Coal Tar Shampoo Products, each Defendant recognized the purposes for which the products would be used and impliedly warranted the products were manufactured properly, tested properly, and did not contain any

1 undisclosed impurities, substances, or risks. These affirmative representations became part of
2 the basis of the bargain in every purchase by Plaintiff and every other class member.

3
4 62. At all times relevant times California and all other states had codified and adopted
5 the provisions of the Uniform Commercial Code governing the warranty of merchantability
6 and fitness for ordinary purpose.

7
8 63. Each Defendant was a merchant within the meaning of the above statute.

9
10 64. Defendants' Coal Tar Shampoo Products constituted goods or products within
11 the meaning of the products to which implied warranty attaches.

12
13 65. Defendants were obligated to provide Plaintiff and each other class member as
14 set forth in this subsection reasonably fit Coal Tar Shampoo Products for the purpose for which
15 the product was sold and to conform to the standards of the trade in which Defendants are
16 involved such that the product was of fit and merchantability quality.

17
18 66. Defendants knew or should have known that their Coal Tar Shampoo Products
19 were being manufactured and sold for the intended purpose and impliedly warranted that their
20 Coal Tar Shampoo Products were of merchantable quality and fit for that purpose.

21
22 67. Defendants breached their implied warranty because their Coal Tar Shampoo
23 Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did
24 not conform to the standards generally applicable to such goods.

25
26 68. Plaintiff and each other class member would not have purchased the Coal Tar
27 Shampoo Products had they known these products carried undisclosed risks, or, alternatively,
28 would not have purchased them on the same terms (e.g., purchased them for substantially less).

69. To the extent applicable, direct privity is not required between each Defendant and Plaintiff or other class members because, among other things, each Defendant is a manufacturer and made direct statements about the safety of its products and intended its statements and affirmations to flow to Plaintiff and other class members. Further, Plaintiff and each other class member were intended third-party beneficiaries to the extent Defendants made any warranty or representation to a reseller who in turn resold Coal Tar Shampoo Products to consumers.

70. As a direct and proximate result of each Defendant's breach of warranty, Plaintiff and each other class member have been injured and suffered damages in the amount of the purchase price of the Coal Tar Shampoo Products, in that the Coal Tar Shampoo Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

71. Although Plaintiff does not seek to recover for physical injuries, Defendants' Coal Tar Shampoo Products carried undisclosed risks and resulted in physical impact to Plaintiff and other class members, including unbargained for, undisclosed sub-cellular or structural impact on Plaintiff's and each other class member's bodies.

72. Pre-suit notice is not required, but even if it is, such notice was provided to each Defendant.

THIRD COUNT

FRAUD (AFFIRMATIVE MISREPRESENTATION, OMISSION, AND CONCEALMENT) AGAINST DEFENDANTS

73. Plaintiff alleges this claim for relief on behalf of himself and of all similarly

1 situated class members, both those in California and those in other states, the laws of which
2 do not conflict with California law.

3
4 74. Plaintiff incorporates the allegations in paragraphs 1-42 as though fully set forth
5 herein.

6 75. Each Defendant affirmatively misrepresented material facts including, *inter alia*,
7 that its Coal Tar Shampoo Products were not manufactured properly, were not tested properly,
8 and contained any undisclosed impurities, substances, or risks.

9
10 76. Defendants omitted material facts including, *inter alia*, that their Coal Tar
11 Shampoo Products were not manufactured properly, were not tested properly, and contained
12 any undisclosed impurities, substances, or risks. This includes statements in the product
13 labeling and packaging that described the product as safe and effective without disclosing the
14 presence or levels of benzene. Defendants' actions had the effect of fraudulently inducing
15 customers to pay in whole or in part for Defendants' Coal Tar Shampoo Products – products
16 which they knew or should have known did not comply with the applicable standards and
17 contained undisclosed benzene impurities.

18
19 77. Plaintiff and each other class member would not have purchased the Coal Tar
20 Shampoo Products had they known these drugs contained undisclosed benzene impurities or
21 that the products did not have the represented safety and efficacy profile. Or, alternatively,
22 Plaintiff and each other class member would have paid less for the Coal Tar Shampoo
23 Products.

24
25 78. Each Defendant knew, or reasonably should have known, that its
26
27
28

1 misrepresentations were materially false or misleading or that the omission of material facts
2 rendered such misrepresentations false or misleading.

3
4 79. Each Defendant also knew, or had reason to know, that its misrepresentations and
5 omissions would induce the Class(es) to pay for some or all of the cost of its Coal Tar Shampoo
6 Products.

7
8 80. Defendants' misrepresentations and omissions were material.

9 81. Defendants actively concealed their misrepresentations and omissions from the
10 Class(es), government regulators, and the public.

11
12 82. To the extent applicable, Defendants intended their misrepresentations and
13 omissions to induce Plaintiff, and each other class member as set forth in this sub-section, to
14 pay for their Coal Tar Shampoo Products.

15
16 83. But for these misrepresentations and omissions, Plaintiff and each other class
17 member as set forth in this sub-section, would not have paid for Defendants' Coal Tar
18 Shampoo Products. Or, alternatively, Plaintiff and each other class member would have paid
19 less for the Coal Tar Shampoo Products.

20
21 84. Defendants' conduct alleged herein demonstrates their intent to deceive Plaintiff
22 and other class members. Each Defendant, *inter alia*, intentionally omitted material facts and
23 made affirmative misrepresentations described herein about the Coal Tar Shampoo Products
24 which it knew were false or inaccurate.

25
26 85. To the extent applicable, Plaintiff and each other class member as set forth in this
27 sub-section, were justified in relying on each Defendant's misrepresentations and omissions.
28

1 The same or substantively identical misrepresentations and omissions were communicated to
2 each Class(es) member, including through product labeling or other statements by each
3 Defendant. No reasonable consumer would have paid what they did for Defendants' Coal Tar
4 Shampoo Products but for their unlawful conduct. To the extent applicable, reliance may be
5 presumed in these circumstances.
6

7
8 86. Although Plaintiff does not seek to recover for physical injuries, each
9 Defendant's Coal Tar Shampoo Products carried undisclosed risks and resulted in physical
10 impact to Plaintiff and other class members, including unbargained for, undisclosed sub-
11 cellular or structural impact on Plaintiff's and each other class member's body.
12

13 87. Plaintiff and each other class member as set forth in this sub-section were
14 damaged by reason of each Defendant's misrepresentations and omissions alleged herein.
15

16 **FOURTH COUNT**

17 **NEGLIGENT MISREPRESENTATION AND OMISSION**

18
19 88. Plaintiff alleges this claim for relief on behalf of himself and all similarly situated
20 class members, both those in California and those in other states, the laws of which do not
21 conflict with California law.
22

23 89. Plaintiff incorporates the allegations in paragraphs 1-42 as though fully set forth
24 herein.
25

26 90. Each Defendant had or undertook a duty to accurately and truthfully represent
27 the quality, nature, and characteristics of its Coal Tar Shampoo Products.
28

91. Each Defendant failed to exercise ordinary care in making or representing

1 statements (or in failing to disclose facts) concerning the quality, nature, and characteristics
2 of its Coal Tar Shampoo Products.

3
4 92. Each Defendant negligently misrepresented or omitted facts regarding the
5 quality, nature, and characteristics of its Coal Tar Shampoo Products. This includes statements
6 in the product labeling and packaging that described the product as safe and effective without
7 disclosing the presence or levels of benzene. Defendants' actions had the effect of fraudulently
8 inducing customers to pay in whole or in part for Defendants' Coal Tar Shampoo Products –
9 products which they knew or should have known did not comply with the applicable standards
10 and contained undisclosed benzene impurities.
11
12

13 93. Each Defendant knew, or reasonably should have known, that its representations
14 alleged herein were materially false or misleading or that the omission of material facts
15 rendered such representations false or misleading. Each Defendant also knew, or had reason
16 to know, that its misrepresentations and omissions would induce Plaintiff and each other class
17 member as set forth in this sub-section to make purchases of Defendants' Coal Tar Shampoo
18 Products.
19
20

21 94. As a direct and proximate result of each Defendant's acts and omissions
22 described herein, Plaintiff and each other class member as set forth in this sub-section have
23 suffered harm and will continue to do so.
24

25 95. Defendants' misrepresentations or omissions were material and a substantial
26 factor in Plaintiff's and other class members' paying for Coal Tar Shampoo Products.
27

28 96. Each Defendant intended its misrepresentations or omissions to induce Plaintiff

1 and each other class member as set forth in this sub-section to make purchases of Coal Tar
2 Shampoo Products, or had reckless disregard for same.

3
4 97. But for these misrepresentations (or omissions), Plaintiff and each other class
5 member as set forth in this sub-section would not have made purchases of Defendants' Coal
6 Tar Shampoo Products. Or, alternatively, Plaintiff and each other class member would have
7 paid less for Coal Tar Shampoo Products.
8

9 98. Defendants' conduct alleged herein demonstrates their intent to deceive Plaintiff
10 and other class members. Each Defendant, *inter alia*, intentionally omitted material facts and
11 made affirmative misrepresentations described herein about the Coal Tar Shampoo Products
12 which it knew were false or inaccurate.
13

14 99. Plaintiff and each other class member as set forth in this sub-section were
15 justified in relying on Defendants' misrepresentations or omissions. The same or substantively
16 identical misrepresentations were communicated, and/or the same or substantively identical
17 omissions were not communicated to each purchaser.
18

19 100. Each Defendant owed a special duty to Plaintiff and each other class member on
20 account of the special relationship that existed between the Defendant, as a seller of a product
21 to be applied to the human body. On account of the known or knowable application and use
22 of the Coal Tar Shampoo Products, and each Defendant's superior knowledge and position as
23 manufacturer, distributor, and seller of the Coal Tar Shampoo Products, each Defendant had
24 a special duty to disclose risks to consumers such as Plaintiff and other class members.
25
26

27 101. Although Plaintiff does not seek to recover for physical injuries, each
28

1 Defendant's Coal Tar Shampoo Products carried undisclosed risks and resulted in physical
2 impact to Plaintiff and other class members, including unbargained for, undisclosed sub-
3 cellular or structural impact on Plaintiff's and each other class member's body.
4

5 102. Plaintiff and each other class member as set forth in this sub-section were
6 damaged by reason of each Defendant's misrepresentation or omissions alleged herein.
7

8 **FIFTH COUNT**
9 **VIOLATION OF CONSUMER PROTECTION LAW**

10 103. Plaintiff alleges this claim for relief on behalf of himself and all similarly situated
11 class members, both those in California and those in other states, the laws of which do not
12 conflict with California law.
13

14 104. Plaintiff incorporates the allegations in paragraph 1-42 as though fully set forth
15 herein.
16

17 105. Defendants have violated the consumer protection statutes as follows:
18

- 19 a. Defendants engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Ala. Code § 8-19-1, *et seq.*;
21
22 b. Defendants engaged in unfair competition or unfair or deceptive acts or
23 practices in violation of Alaska Stat. § 45.50.471, *et seq.*;
24
25 c. Defendants engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of Arizona Rev. Stat. § 44-1522, *et seq.*;
27
28 d. Defendants engaged in unfair competition or unfair or deceptive acts or
practices in violation of Ark. Code § 4-88-101, *et seq.*;

- e. Defendants violated the California Unfair Competition Law by engaging in unfair or deceptive acts or practices in violation of Cal. Bus. Prof. Code § 17200, *et seq.*;
- f. Defendants violated the California Consumers Legal Remedies Act, Cal. Civ. Code §§ 1750, *et seq.*;
- g. Defendants violated the California False Advertising Law, Cal. Bus. & Prof. Code §§ 17500, *et seq.*;
- h. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Colo. Rev. Stat. § 6-1-105, *et seq.*;
- i. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Conn. Gen. Stat. § 42-110b, *et seq.*;
- j. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of 6 Del. Code § 2511, *et seq.*;
- k. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of D.C. Code § 28-3901, *et seq.*;
- l. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Fla. Stat. § 501.201, *et seq.*;
- m. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Ga. State 10-1-392, *et seq.*;
- n. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Haw. Rev. Stat. § 480, *et seq.*;

- 1 o. Defendants engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of Idaho Code § 48-601, *et seq.*;
- 3 p. Defendants engaged in unfair competition or unfair or deceptive acts or
4 practices in violation 815 ILCS 505/1, *et seq.*;
- 5 q. Defendants engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Ind. Code Ann. § 24-5-0.5.1, *et seq.*;
- 7 r. Defendants engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Iowa Code Ann. § 714H, *et seq.*;
- 9 s. Defendants engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Kan. Stat. § 50-623, *et seq.*;
- 11 t. Defendants engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of Ky. Rev. Stat. § 367.110, *et seq.*;
- 13 u. Defendants engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of La. Rev. Stat. § 51:1401, *et seq.*;
- 15 v. Defendants engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of 5 Me. Rev. Stat. § 207, *et seq.*;
- 17 w. Defendants engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of Md. Com. Law Code § 13-101, *et seq.*;
- 19 x. Defendants engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Mass. Gen. L. Ch. 93A, *et seq.*;
- 21 y. Defendants engaged in unfair competition or unfair or deceptive acts or
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practices in violation of Mich. Stat. § 445.901, *et seq.*;

z. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Minn. Stat. § 325F.67, *et seq.*;

aa. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Miss. Code Ann. § 75-24-1, *et seq.*;

bb. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Mo. Rev. Stat. § 407.0 10, *et seq.*;

cc. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code § 30-14-101, *et seq.*;

dd. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Neb. Rev. Stat. § 59-1601, *et seq.*;

ee. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Nev. Rev. Stat. § 598.0903, *et seq.*;

ff. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of N.H. Rev. Stat. § 358-A:1, *et seq.*;

gg. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of N.J. Stat. Ann. § 56:8-1, *et seq.*;

hh. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of N.M. Stat. Ann. § 57-12-1, *et seq.*;

ii. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*;

- 1 jj. Defendants engaged in unfair competition or unfair or deceptive acts or
2 practices in violation of N.C. Gen. Stat. § 75-1.1, *et seq.*;
- 3 kk. Defendants engaged in unfair competition or unfair or deceptive acts or
4 practices in violation of N.D. Cent. Code § 51-15-01, *et seq.*;
- 5 ll. Defendants engaged in unfair competition or unfair or deceptive acts or
6 practices in violation of Ohio Rev. Stat. § 1345.01, *et seq.*
- 7 mm. Defendants engaged in unfair competition or unfair or deceptive acts or
8 practices in violation of Okla. Stat. tit. 15 § 751, *et seq.*;
- 9 nn. Defendants engaged in unfair competition or unfair or deceptive acts or
10 practices in violation of Or. Rev. Stat. § 646.605, *et seq.*;
- 11 oo. Defendants engaged in unfair competition or unfair or deceptive acts or
12 practices in violation of 73 Pa. Stat. § 201-1, *et seq.*;
- 13 pp. Defendants engaged in unfair competition or unfair or deceptive acts or
14 practices in violation of R.I. Gen. Laws § 6-13.1-1, *et seq.*;
- 15 qq. Defendants engaged in unfair competition or unfair or deceptive acts or
16 practices in violation of S.C. Code Laws § 39-5-10, *et seq.*;
- 17 rr. Defendants engaged in unfair competition or unfair or deceptive acts or
18 practices in violation of S.D. Code Laws § 37-24-1, *et seq.*;
- 19 ss. Defendants engaged in unfair competition or unfair or deceptive acts or
20 practices in violation of Tenn. Code § 47-18-101, *et seq.*;
- 21 tt. Defendants engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of Tenn. Code § 47-18-101, *et seq.*;
- 23 tt. Defendants engaged in unfair competition or unfair or deceptive acts or
24 practices in violation of Tenn. Code § 47-18-101, *et seq.*;
- 25 tt. Defendants engaged in unfair competition or unfair or deceptive acts or
26 practices in violation of Tenn. Code § 47-18-101, *et seq.*;
- 27 tt. Defendants engaged in unfair competition or unfair or deceptive acts or
28 practices in violation of Tenn. Code § 47-18-101, *et seq.*;

practices in violation of Tex. Bus. & Com. Code § 17.41, *et seq.*;

uu. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Utah Code Ann. § 13-11-1, *et seq.*;

vv. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Vt. Stat. Ann. Tit. 9, § 2451, *et seq.*;

ww. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Va. Code § 59.1-196, *et seq.*;

xx. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Wash. Rev. Code § 19.86.010, *et seq.*;

yy. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of W. Va. Code § 46A-6-101, *et seq.*;

zz. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Wis. Stat. § 100.20, *et seq.*;

aaa. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of Wyo. Stat. § 40-12-100, *et seq.*; and

bbb. Defendants engaged in unfair competition or unfair or deceptive acts or practices in violation of 23 L.P.R.A. § 1001, *et seq.*, the applicable statute for the Commonwealth of Puerto Rico.

106. Each Defendant's conduct constitutes trade or commerce or other actionable activity within the meaning of the above statutes.

107. Each Defendant, directly or through its agents, employees, and/or subsidiaries,

1 violated the state statutes by knowingly and intentionally misrepresenting, omitting,
2 concealing, and failing to disclose material facts on the labels for its Coal Tar Shampoo
3 Products, including that: such products were inherently defective, unreasonably dangerous,
4 not fit to be used for their intended purpose, and/or contained levels of benzene that rendered
5 them unsafe and unfit.
6

7
8 108. Specifically, by knowingly and intentionally misrepresenting, omitting,
9 concealing, and failing to disclose material facts regarding the Coal Tar Shampoo Products,
10 as detailed above, each Defendant engaged in one or more unlawful practices in violation of
11 the above state statutes. Each Defendant's misrepresentations and omissions regarding the
12 inherently defective and unreasonably dangerous nature of the Coal Tar Shampoo Products
13 were disseminated to Plaintiff and each other class member as set forth in this sub-section in
14 a uniform manner. Defendants sold Coal Tar Shampoo Products that they expressly warranted
15 were manufactured and tested properly and did not contain any undisclosed impurities,
16 substances, or risks. This includes statements in the product labeling and packaging that
17 described the product as safe and effective without disclosing the presence or levels of
18 benzene.
19
20
21

22 109. Each Defendant's conduct as alleged herein constitutes unfair, deceptive,
23 misleading, or otherwise actionable practices as to each Defendant's conduct concerning the
24 ingredients and safety profile for the Coal Tar Shampoo Products. Each Defendant promised
25 a safe and effective product, but the products were not as promised because their actual safety
26 profile was not the same as that represented and bargained for.
27
28

1 110. To the extent applicable, each Defendant knew, intended, or should have known
2 that its fraudulent and deceptive acts, omissions, or concealment would induce reliance and
3 that reliance can be presumed under the circumstances. As a direct and proximate result of
4 each Defendant's unfair methods of competition and unfair or deceptive acts or practices,
5 Plaintiff and other class members have suffered damages – an ascertainable loss – in an
6 amount to be proved at trial.
7

8
9 111. Each Defendant engaged in unlawful conduct by deliberately and knowingly
10 engaging in misleading, deceptive, and false statements regarding the Coal Tar Shampoo
11 Products in the course of each Defendant's business. Specifically, each Defendant
12 represented that the Coal Tar Shampoo Products were safe and effective and did not carry
13 any undisclosed risks. But this was not the case, as the products carried health risks that were
14 not disclosed. Each Defendant made these misrepresentations, or omitted material
15 information, in its marketing the Coal Tar Shampoo Products and in the Products' packaging,
16 labeling, and instructions.
17

18
19 112. The existence of undisclosed risks would have been material to Plaintiff and
20 other class members.
21

22 113. Plaintiff and other class members suffered ascertainable loss and actual damages
23 as a direct and proximate result of each Defendant's concealment, misrepresentations, and/or
24 failure to disclose material information in that Plaintiff and other class members would not
25 have purchased the Coal Tar Shampoo Products, or, alternatively, would not have purchased
26 on the same terms (e.g., purchased them for substantially less), had they known the truth.
27
28

1 114. Although Plaintiff does not seek to recover for physical injuries, the Coal Tar
2 Shampoo Products carried undisclosed risks and resulted in physical impact to Plaintiff and
3 other class members, including unbargained for, undisclosed sub-cellular or structural impact
4 on Plaintiff's and each other class member's body.
5

6 115. To the extent applicable, pre-suit notice and/or a demand letter was sent to each
7 Defendant prior to the filing of the Complaint.
8

9 **SIXTH COUNT**

10 **NEGLIGENCE**

11
12 116. Plaintiff alleges this claim for relief on behalf of himself and all similarly
13 situated class members, both those in California and those in other states, the laws of which
14 do not conflict with California law.
15

16 117. Plaintiff incorporates the allegations in paragraph 1-42 as though fully set forth
17 herein.
18

19 118. Each Defendant owed a duty to Plaintiff and each other class member to ensure
20 its Coal Tar Shampoo Products were safe and effective, were manufactured properly, were
21 tested properly, and did not contain any undisclosed impurities, substances, or risks.
22

23 119. Each Defendant owed a duty to Plaintiff and each other class member because
24 the latter were foreseeable, reasonable, and probably users of Coal Tar Shampoo Products,
25 and victims of each Defendant's deceptive and wrongful conduct. Each Defendant knew, or
26 should have known, that its Coal Tar Shampoo Products were not safe and effective, were
27 not manufactured properly, were not tested properly, and contained undisclosed risks.
28

1 120. Each Defendant inadequately oversaw its own manufacture, distribution,
2 marketing, and sale of its Coal Tar Shampoo Products, resulting in the Coal Tar Shampoo
3 Products being sold to consumers without disclosure of the true character of the product.
4

5 121. Each Defendant maintained or should have maintained a special relationship
6 with Plaintiff and each other class member, who were anticipated or intended direct and
7 intended third-party beneficiaries, as it was obligated to ensure that its Coal Tar Shampoo
8 Products were safe and effective, were manufactured properly, were tested properly, and did
9 not contain any undisclosed risks.
10

11 122. Each Defendant's own actions and inactions created a foreseeable risk of harm
12 to Plaintiff and each other class member.
13

14 123. Each Defendant breached duties owed to Plaintiff and each other class member
15 by failing to exercise reasonable care sufficient to protect the interests and meet the needs of
16 Plaintiff and each other class member.
17

18 124. Although Plaintiff does not seek to recover for physical injuries, the Coal Tar
19 Shampoo Products carried undisclosed risks and resulted in physical impact to Plaintiff and
20 other class members, including unbargained for, undisclosed sub-cellular or structural impact
21 on Plaintiff's and each other class member's body.
22

23 125. As a direct and proximate result of each Defendant's negligent conduct, Plaintiff
24 and each other class member suffered injury and are entitled to damages in an amount to be
25 proven at trial.
26

27 **SEVENTH COUNT**
28

UNJUST ENRICHMENT

126. Plaintiff alleges this claim for relief on behalf of himself and all similarly situated class members, both those in California and those in other states, the laws of which do not conflict with California law.

127. Plaintiff incorporates the allegations in paragraph 1-42 as though fully set forth herein.

128. Each Defendant was unjustly enriched at the expense of Plaintiff and each other class member by virtue of their paying for each Defendant's Coal Tar Shampoo Products. Plaintiff and each other class member conferred a direct benefit on each Defendant by purchasing each Defendant's Coal Tar Shampoo Products either directly from Defendant or through a reseller.

129. Each Defendant profited immensely from selling the Coal Tar Shampoo Products that carried undisclosed risks, that were not manufactured properly, and that were not tested properly.

130. Plaintiff and each other class member were unjustly deprived of money obtained by each Defendant as a result of the improper amounts paid for Coal Tar Shampoo Products. It would be inequitable and unconscionable for each Defendant to retain the profit, benefit, and other compensation obtained from Plaintiff and each other class member as a result of each Defendant's wrongful conduct alleged.

131. In the alternative to the other causes of actions alleged herein, Plaintiff and each other class member have no adequate remedy at law.

1 132. Although Plaintiff does not seek to recover for physical injuries, the Coal Tar
2 Shampoo Products carried undisclosed risks and resulted in physical impact to Plaintiffs and
3 other class members, including unbargained for, undisclosed sub-cellular or structural impact
4 on Plaintiff's and each other class member's body.

5
6 133. Plaintiff and each other class member are entitled to seek and do seek restitution
7 from each Defendant as well as an order from this Court requiring disgorgement of all profits,
8 benefits, and other compensation obtained by each Defendant by virtue of its wrongful
9 conduct.
10

11 **PRAYER FOR RELIEF**
12

13
14 For these reasons, Plaintiff prays for the following judgment:

- 15 A. An order certifying this action as a class action;
16 B. An order appointing Plaintiff as Class Representatives and appointing
17 undersigned counsel as Class Counsel to represent the Class;
18 C. A declaration that each Defendant is liable pursuant to each and every one
19 of the above-enumerated causes of action;
20 D. An order awarding appropriate preliminary and/or final injunctive relief
21 against the conduct of each Defendant described herein;
22 E. Payment to Plaintiff and class members of all damages, exemplary or
23 punitive damages, and/or restitution associated with the conduct for all causes of action
24 in an amount to be proven at trial, including, but not limited to, the full amounts paid or
25 reimbursed for the Coal Tar Shampoo Products and each Defendant's ill-gotten gains;
26
27
28

F. An award of attorneys' fees, expert witness fees, and costs, as provided by applicable law and/or as would be reasonable from any recovery of monies recovered for or benefits bestowed on the class members;

G. An award of statutory penalties to the extent available;

H. Interest as provided by law, including, but not limited to, pre-judgment and post-judgment interest as provided by rule or statute; and

I. Such other and further relief as this Court may deem just, equitable, or proper.

JURY DEMAND

Plaintiff respectfully requests a trial by jury on all causes of action so triable.

Dated: March 12, 2024

By: /s/ Allan Kanner

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